

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California
corporation,

Plaintiff,

v.

IWEB GROUP, INC., a Canadian
company d/b/a/ iWeb.com; IWEB
INTELLECTUAL PROPERTY, INC., a
Canadian company d/b/a iWeb.com;
IWEB TECHNOLOGIES, INC., a
Canadian company d/b/a/ iWeb.com; and
DOES 1 through 100, inclusive
Defendants.

Case No. 13 CV 0328 BTM BLM

**DECLARATION OF PIERRE-LUC
TOUPIN IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

Judge: Hon. Barry Ted Moskowitz
Court: 15B
Date: May 31, 2013
Time: 11:00 A.M.

NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT



1 I, Pierre-Luc Toupin, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. My name is Pierre-Luc Toupin, and I am the Vice-President-Finance
3 of iWeb Technologies Inc. ("iWeb Technologies"), a Canadian company, which has
4 been sued in this Southern District of California action. I previously submitted an
5 Affidavit in support of Defendants' motion to dismiss Plaintiff Perfect 10's
6 ("Plaintiff" or "Perfect 10") nearly identical complaint brought in the District of
7 Columbia late last year, and summarily dismissed by Perfect 10 earlier this year. I
8 am familiar with the facts underlying this case, and I am authorized to submit this
9 Declaration supporting Defendants' motion to dismiss the latest complaint filed by
10 Perfect 10, a California corporation. I have personal knowledge of all facts stated in
11 this Declaration.

12 2. iWeb Technologies is a Canadian-based company domiciled at 20
13 Place du commerce, Nun's Island, Montreal (Quebec) Canada H3D 1Z6, and
14 operating 90,000 square feet of operations' centers at several local Montreal,
15 Quebec, Canada locations commonly called "server farms".

16 3. We provide to our customers the use of physical infrastructure at our
17 facilities by offering two principal types of services. The first type of service is
18 providing a "dedicated server" (also called iWeb MyServerNow in our terms and
19 conditions) pursuant to which we provide for our customers' exclusive use one or
20 more servers installed in our facilities in Montreal. We are only responsible for the
21 physical maintenance of such installed servers by fixing any of their hardware
22 failures, and for providing redundant cooling, electrical supply and Internet
23 connectivity to ensure the proper operation of that hardware. We currently have
24 approximately 18,000 dedicated servers in our server farms in the Montreal region.

25 4. The other principal type of service we offer is our co-location services
26 by which the customer installs its own servers in a "cage" located inside our server
27 farms. In that case, we only provide redundant cooling, electrical supply and
28 Internet connectivity. In short, the only real difference between the two types of



1 services is we own the server in the former, and the customer owns the server in the
2 latter.

3 5. The only type of packages at issue in Perfect 10's notices are dedicated
4 servers packages. All such servers are installed in Montreal, Quebec, Canada, to
5 which Perfect 10 sent its DMCA notices at issue in this case.

6 6. It is important to understand how our dedicated servers services work.
7 Our customers assume control of their servers configured with only essential
8 systems software. Each customer then installs its own proprietary software and
9 content on its server, after which each customer operates its servers in conducting
10 whatever services the customer offers to its clientele. The customer may choose to
11 host on this server a website for itself or for others or it may choose to perform
12 other tasks with its server, iWeb Technologies does not control this. In short, iWeb
13 Technologies' role starts and ends at the customer's server in Montreal, much like a
14 warehouse or building exclusively leased to a customer conducting its own
15 business. iWeb Technologies does not move, ship, or transfer the server or its
16 contents, change or otherwise modify the contents, or deal in any way with the
17 customer's customers. The Internet connectivity provided is simply an entry point
18 to the Internet, it is up to the customer to decide how, when, to what extent and to
19 which location content will be sent (if any). In short, iWeb Technologies'
20 operations are fixed in Montreal where the customer's server resides. Any
21 transmission of data, to or from the customer's server, are completely and
22 exclusively within the customer's control. Similarly, any hosting or other services
23 offered by the customer to or from its Montreal-fixed server are conducted beyond
24 the knowledge or control of iWeb Technologies.

25 7. We offer a variety of server maintenance plans and arrangements, as
26 noted on our website at www.iweb.com, but with all such plans and arrangements,
27 the customer exclusively owns and controls the data and applications software on
28 such servers. iWeb Technologies only has a limited support role in connection with



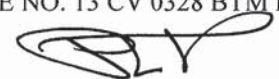
1 the server itself.

2 8. We have no employees, equipment, facilities of any kind anywhere in
3 California. We do not have any server farm outside of the Montreal region. .
4 Further, we provide no dedicated server, co-location, hosting or other services in
5 California or the United States, as all such services are provided exclusively in
6 Montreal at our facilities. Further, we host and maintain our own website in
7 Montreal, Quebec, Canada, and all our customers thus communicate with us by
8 accessing our Montreal website or calling us by telephone in Montreal. Finally,
9 iWeb Technologies does not share any revenues or otherwise benefit from the
10 activities of any such customers' websites.

11 9. I read in Perfect 10's complaint the allegation that iWeb owns or
12 operates one or more data centers or cluster of websites in San Diego or more
13 generally in California. This is incorrect. iWeb Technologies does not, directly or
14 indirectly (through affiliates, joint venture partners, or otherwise) operate, own or
15 control any data center or cluster of websites located in the State of California,
16 including in San Diego County, nor has it done so at any point in the past.

17 10. We serve customers from a wide range of countries and all of these use
18 our servers in the Montreal region.

19 11. I have carefully reviewed Perfect 10's complaint. Although Perfect 10
20 earlier sued New Dream Network, and incorrectly alleged that company was an
21 iWeb customer, it recently dismissed New Dream Network, and has now agreed it
22 made such customer allegations in error. Perfect 10 continues, however, to advance
23 erroneous allegations, or those that cannot be scrutinized for accuracy, including its
24 allegations that iWeb sells hosting services to websites operators who infringe and
25 by offering hosting services to others. As I explained, dedicated server and
26 colocation services do not involve any iWeb company hosting or otherwise
27 operating any such websites. Any such hosting or operation is done by those
28 companies which control the servers, which are only based in iWeb Technologies'



1 Montreal facilities.

2 12. The flurry of DMCA notices sent by Plaintiff do not involve any
3 server or content located in California; rather, to the extent such notices even
4 involve our customers, such notices involve the activities on the customer's
5 hardware based at our Montreal facilities. Means to contact such customers are
6 readily available to Perfect 10 or any other entity seeking DMCA or any other
7 redress. See Exhibit 2 attached for a sample DMCA Agent listed by
8 imagevenue.com cited by Perfect 10 at Paragraph 9 of its complaint. Since we have
9 no operational control over any customer's server, including each customer's
10 installed application software and content, we have no control over or access to the
11 websites or activities of any such customer.

12 13. Perfect 10 suggests, in its complaint that some websites hide their real
13 addresses. In fact, such private domain registrations are perfectly legitimate efforts
14 to avoid spammers. Even Perfect 10's law firm in this action uses just such a
15 private domain registration. Of course, any communication sent to such private
16 domain registration services, like Network Solutions, is forwarded to the website's
17 private address.

18 14. I have also noted that Perfect 10 claims iWeb Technologies and its
19 affiliated companies operate as a single entity. Actually, the three iWeb companies
20 have distinctly different roles and support such separate missions by observing
21 correct Canadian Federal and Provincial requirements. Specifically, iWeb
22 Technologies is the company that maintains the Montreal-based facilities where its
23 customers operate servers. iWeb Intellectual Property Inc., exists only to hold a
24 software license. iWeb Group is simply a holding company that owns the shares of
25 iWeb Technologies and iWeb Intellectual Property. Such structures are common for
26 Canadian companies.



1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 22nd day of April 2013.

4 
5 Pierre-Luc Toupin

6 LIT/1356468.3
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO